IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
December 3, 2007 Session

BRIGADOON PARTNERS, LLC v. DALE HUGHES, ET AL.

Appeal from the Chancery Court for Bradley County
No. 06-053 Jerri S. Bryant, Chancellor

No. E2007-00267-COA-R3-CV - FILED FEBRUARY 27, 2008

The plaintiff purchaser brought this action for specific performance of an agreement for the sale of a parcel of real estate. The trial court granted the seller summary judgment upon its finding, among other things, that the property description in the agreement was insufficient to satisfy the requirements of the statute of frauds. We affirm the trial court's judgment that the description of the property, which was to be divided from a larger tract owned by the seller, as "[i]n Cleveland, Tennessee, fronting on Paul Huff Pkwy at exit 27, and being further described as 1.5 acres fronting on the PKWY and I-75," was insufficient, and therefore the sale agreement was unenforceable pursuant to the statute of frauds.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

SHARON G. LEE, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J, and CHARLES D. SUSANO, JR., J., joined.

P. Edward Pratt, Knoxville, Tennessee, for the appellant, Brigadoon Partners, LLC.

J. Michael Sharp and Travis D. Henry, Cleveland, Tennessee, for the appellees, Dale Hughes and Brenda Hughes.

OPINION

I. Background

The dispositive facts in this case are undisputed. Dale and Brenda Hughes (the "Seller") own a tract of approximately 4.5 acres in Cleveland, Tennessee, bordered by Interstate 75 to the west, Paul Huff Parkway to the south, and Ellis Circle Drive to the east.[1] Dale Hughes and Darby Campbell (on behalf of buyer Brigadoon Partners, LLC, (the "Purchaser")) negotiated for the sale

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[1] These compass point descriptions are not precise, but convey the directions generally for ease of reference.

of approximately 1.5 acres to be divided from the 4.5-acre parcel. Mr. Hughes and Mr. Campbell signed an agreement drafted by Mr. Campbell containing the following description of the property to be sold: "[i]n Cleveland, Tennessee, fronting on Paul Huff Pkwy at exit 27, and being further described as 1.5 acres fronting on the PKWY and I-75."

The agreement contained a typed blank line after the above description. Mr. Campbell testified that he expected Mr. Hughes to fill in the blank line with a further description of the property when Mr. Campbell dropped off the agreement for Mr. Hughes to sign. After Mr. Hughes signed it without writing anything on the blank line, Mr. Campbell added the following handwritten language on the blank: "[f]rontage on Ellis Cir/Paul Huff/I-75 Exit Ramp." Mr. Campbell initialed the handwritten addition. Mr. Hughes never signed or initialed the handwritten addition, and maintains that he never intended or assented to sell property fronting on Ellis Circle Drive. It thus became apparent that Mr. Campbell and Mr. Hughes did not agree on which 1.5-acre parcel was to be carved out of the larger tract and included in the sale.

The Purchaser brought this action for specific performance after the Seller refused to proceed with the sale. Each party moved for summary judgment after discovery. Following a hearing, the trial court found that "an essential term of the contract, the description of the land to be sold, is in this case, insufficient to satisfy the statute of frauds." The trial court consequently held the agreement unenforceable and granted the Seller summary judgment.

II. Issue Presented

The Purchaser appeals, raising the issue, as restated, of whether the trial court correctly granted the Seller summary judgment pursuant to its finding that the agreement to sell the real estate was unenforceable.

III. Analysis

A. Standard of Review

Summary judgments are proper in virtually any civil case that can be resolved on the basis of legal issues alone. ***Fruge v. Doe,*** 952 S.W.2d 408, 410 (Tenn. 1997); ***Byrd v. Hall***, 847 S.W.2d 208, 210 (Tenn.1993); ***Pendleton v. Mills,*** 73 S.W.3d 115, 121 (Tenn. Ct. App. 2001). They are not, however, appropriate when genuine disputes regarding material facts exist. Tenn. R. Civ. P. 56.04. Thus, a summary judgment should be granted when the undisputed facts, as well as the inferences reasonably drawn from the undisputed facts, support only one conclusion – that the party seeking the summary judgment is entitled to a judgment as a matter of law. ***Pero's Steak & Spaghetti House v. Lee,*** 90 S.W.3d 614, 620 (Tenn. 2002); ***Webber v. State Farm Mut. Auto. Ins. Co.***, 49 S.W.3d 265, 269 (Tenn. 2001).

The party seeking a summary judgment bears the burden of demonstrating that no genuine dispute of material fact exists and that it is entitled to a judgment as a matter of law. ***Godfrey v. Ruiz,*** 90 S.W.3d 692, 695 (Tenn. 2002); ***Shadrick v. Coker,*** 963 S.W.2d 726, 731 (Tenn. 1998).

When the moving party is the defendant, it is entitled to a judgment as a matter of law only when it affirmatively negates an essential element of the non-moving party's claim or establishes an affirmative defense that conclusively defeats the non-moving party's claim. ***Byrd v. Hall,*** 847 S.W.2d at 215 n. 5; ***Cherry v. Williams,*** 36 S.W.3d 78, 82-83 (Tenn. Ct. App. 2000).

In this case, we review a question of law, as the parties agree there are no disputed questions of fact. Therefore, the summary judgment granted by the trial court enjoys no presumption of correctness on appeal. ***BellSouth Adver. & Publ'g Co. v. Johnson,*** 100 S.W.3d 202, 205 (Tenn. 2003); ***Scott v. Ashland Healthcare Ctr., Inc.,*** 49 S.W.3d 281, 285 (Tenn. 2001). Accordingly, we must make a fresh determination that the requirements of Tenn. R. Civ. P. 56.01 et seq. have been satisfied. ***Hunter v. Brown,*** 955 S.W.2d 49, 50-51 (Tenn. 1997). We must consider the evidence in the light most favorable to the non-moving party and draw all reasonable inferences in the non-moving party's favor. ***Godfrey v. Ruiz,*** 90 S.W.3d at 695; ***Doe v. HCA Health Servs. of Tenn., Inc.,*** 46 S.W.3d 191, 196 (Tenn. 2001).

B. Statute of Frauds: Sufficiency of Property Description

This dispute involves the sale of land. Therefore, the statute of frauds, Tennessee Code Annotated § 29-2-101, is applicable and it provides in pertinent part that "[n]o action shall be brought. . . .[u]pon any contract for the sale of lands. . . . unless the promise or agreement, upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith." Tenn. Code Ann. § 29-2-101(a)(4). Regarding the requirements of the writing necessary to a valid and enforceable sale of land under the statute, the Supreme Court has stated that "[n]o particular form of words or any artificial arrangement of them is required, but the fact of a sale and its terms, embracing a designation of the parties to it, *and the land sold*, must appear with reasonable certainty in the writing relied upon, or some other to which it refers." ***Case v. Brier Hill Collieries,*** 235 S.W. 57, 59 (Tenn. 1921) (quoting ***Shied v. Stamps***, 34 Tenn. (2 Sneed) 172, 1854 WL 2153 (Tenn. 1854)). Tennessee courts have consistently required an adequate description of the land to be sold in the written agreement in order to satisfy the statute of frauds, as generally noted by the ***Case*** Court as follows:

> It may therefore be stated, on the authority of the foregoing cases, that a description of land is good within the statute of frauds which on its face appears to refer to some definite tract, and which by the aid of parol proof can with reasonable certainty be applied to designate such tract.
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> In the application of this rule, however, this qualification must be made. The descriptive terms employed, together with the parol proof, must be such as to point out and comprehend some especial parcel of land to the exclusion of any other parcel of land.
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> If the description is on its face so indefinite as to be applicable to any tract of land, then parol evidence is not admissible at all "because its

> effect is to supply by parol a material part of the agreement, which the statute of frauds requires to be * * * in writing." ***Dobson v. Litton***, 45 Tenn. (5 Cold.) 616.

Case, 235 S.W. at 59.

The facts presented in the present case, with the property description in the agreement stating only "fronting on Paul Huff Pkwy at exit 27, and being further described as 1.5 acres fronting on the PKWY and I-75," are very similar to those presented in the case of ***Gorbics v. Close***, 722 S.W.2d 672 (Tenn. App. 1986), and we are of the opinion that the ***Gorbics*** decision is controlling here. In ***Gorbics***, the Court of Appeals found insufficient a property description contained in a will referencing an agreement to sell "a one acre tract on the northwest corner of my land." ***Gorbics*** cited the general rule stated in the seminal case of ***Dobson v. Litton*** and applied the rule as follows:

> Where an instrument is so drawn that, upon its face, it refers necessarily to some existing tract of land, and its terms can be applied to that one tract only, parol evidence may be employed to show where the tract so mentioned is located. But where the description employed, is one that must necessarily apply with equal exactness to any one of an indefinite number of tracts, parol evidence is not admissible to show that the parties intended to designate a particular tract by the description. [***Dobson v. Litton***, 45 Tenn. (5 Cold.) 619-20 (Tenn. 1868)].
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> In ***Branstetter v. Barnett,*** Tenn. App. 1974, 521 S.W.2d 818, the description of a 120 acre tract was preceded by the words "(the seller) covenants that he is the owner thereof". Thus, the instrument stated that the tract was the land of seller.
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> The distinction between ***Branstetter*** and the present case is that, in ***Branstetter*** the sale included the entire tract owned by the seller, which could have only one identity; whereas, in the present case *the tract to be sold was only a part of the sellers' land, and the instrument does not sufficiently designate which part.*
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> *. . . [T]he writing contains nothing which would locate the one acre within the land of defendants or define its limits or shape, except the area of one acre and being at the northwest corner of defendants' land.* "Northwest corner" is a general location, but does not specify which of numerous possible one acre tracts might be within the general location.

Gorbics, 722 S.W.2d at 674-75.

As in ***Gorbics***, the property description in the agreement in this case makes it possible to ascertain one definite corner of the property to be sold – the southwest corner – because the tract is said to front I-75 and the Paul Huff Parkway. But it is impossible to tell the shape or dimensions of the parcel, and to determine how much, if any, frontage on Ellis Circle Drive the parties intended to include in the sale, because, as in ***Gorbics***, the parcel to be sold was to be divided from a larger tract owned by the sellers. The trial court so held, noting that "[t]here is an unlimited number of shapes that this property could in the defendants' four acres[2] that this Court is not at liberty to make decisions concerning." Because "the description employed is one that must necessarily apply with equal exactness to any one of an indefinite number of tracts," ***Dobson v. Litton***, 45 Tenn. (5 Cold.) at 620, 1868 WL 2161 at *2, parol evidence was inadmissible to show that the parties intended to designate a particular tract by the description. ***Id.***

We acknowledge and have considered the Purchaser's other arguments that the trial court erred in holding the agreement unenforceable, and we find them without merit and moot in light of our holding that the property description in the parties' agreement is insufficient to satisfy the statute of frauds.

IV. Conclusion

For the foregoing reasons and under the aforementioned authorities, the judgment of the trial court is affirmed. Costs on appeal are assessed to the Appellant, Brigadoon Partners, LLC.

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SHARON G. LEE, JUDGE

[2]As we have noted, the actual size of the larger tract owned by the defendants was 4.5 acres.